

30. We calculate a critical value for each of [REDACTED] cable systems carrying a RSN owned and managed by News Corp.⁶¹ This allows us to replicate the pattern of previous withdrawals and [REDACTED], as well as address ACA's claims that small cable companies are particularly vulnerable to this tactic.⁶² We do not calculate a critical value for any RSNs carried by EchoStar because we do not possess sufficient information about the locations and market shares of the cable systems that carry and do not carry the relevant RSNs to make precise calculations regarding News Corp.'s incentives to withhold programming. However, to the extent that DirecTV and EchoStar are much closer substitutes, News Corp. would have an even greater incentive to withhold programming from EchoStar since a larger fraction of EchoStar's customers would be likely to shift to DirecTV than to cable.

31. The analysis of the incentives for News Corp. to permanently withhold regional sports networks from rival MVPDs indicates that this is unlikely to be a profitable endeavor for News Corp. If News Corp. could claim 50% of the joint profits from a withdrawal strategy, it would find permanently withholding a RSN from a rival MVPD to be profitable if between [REDACTED] and [REDACTED] of cable customers switched to a DBS provider. If News Corp. receives 100% of the joint profits from the strategy, the percentage of the rival MVPD's customers that must switch to make permanent foreclosure profitable is between [REDACTED] and [REDACTED]. Table A-4 presents the percentage of all rival cable subscribers that reside in areas where News Corp. would find it profitable to permanently withdraw its RSN. This value will depend on the percent of rival cable subscribers that shift to DBS in response to the removal of the local broadcast station from their chosen MVPD. We hypothesize a range of values from [REDACTED] to [REDACTED]. If we can expect [REDACTED] of rival cable customers to defect to DBS following a withdrawal of the RSN, News Corp. [REDACTED] when they can lay claim to 50% of the additional joint profits. If News Corp. gains 100% of the additional joint profits, [REDACTED] of all rival cable subscribers would be at risk from suffering under a permanent withdrawal of the programming.

32. Table A-4. Percentage of Cable Subscribers at Risk of a Permanent Withdrawal of Regional Sports Programming.[REDACTED]

B. Temporary Withdrawal of Regional Sports Networks from Rival MVPDs

33. JCC argue that the more likely harm is from temporary withdrawal of an RSN during pricing disputes as a tactic to negotiate higher affiliate fees, rather than the threat to permanently withdraw the RSN.⁶³ They estimate that as few as [REDACTED] of cable subscribers must shift to DirecTV for a strategy of temporary withholding to be a credible threat in affiliate fee negotiations.⁶⁴ Applicants instead contend that at least [REDACTED] of cable subscribers must shift to DirecTV for News Corp. to earn a profit by temporarily withholding a RSN.⁶⁵

⁶¹ We do not perform this calculation for Fox Sports Net Rocky Mountain because it has only recently merged with Fox Sports Net Utah and the exact status of carriage and revenue amounts are unclear.

⁶² ACA Comments at 18.

⁶³ JCC Aug. 4 Ex Parte, Rogerson Analysis II at 2.

⁶⁴ JCC Sept. 23 Ex Parte, Rogerson Analysis III at 11.

⁶⁵ Applicants' Sept. 8 Ex Parte, CRA Analysis II ¶ 16.

34. *The analysis of temporary foreclosure of RSNs by News Corp. takes a slightly different tack than the analysis of temporary foreclosure of the local broadcast stations' signals. In that analysis, the losses and gains of foreclosure were based on advertising revenue, which were the same regardless of which MVPD in a DMA was the rival. With RSNs, the losses from foreclosure also depend upon the affiliate fees, and those vary across MVPDs. Therefore we will analyze a temporary foreclosure situation assuming that News Corp. removes an RSN from a specific MSO, but not from EchoStar. Again, we analyze this scenario because [REDACTED]. As with our analysis of permanent foreclosure of a RSN, we do not have adequate data to allow us to analyze the likelihood of a temporary withdrawal of a RSN from EchoStar, [REDACTED].*

35. Applicants' in their calculations assume that the withdrawal of the RSN lasts for three months, after which time it is returned to the rival MVPD.⁶⁶ JCC suggests that a more appropriate assumption would be a one month withdrawal, the same period as Applicants and Cablevision use to analyze the profitability of withdrawal of a broadcast television station signal.⁶⁷ As with the temporary foreclosure analysis of the local broadcast station market, we will assume that the foreclosure lasts for one month, during which time a fraction of the MSO's subscribers will shift to a DBS provider carrying the RSN. We assume that switching cable subscribers go to the two DBS companies in the same proportion as their national market shares, 42% will go to EchoStar and 58% will go to DirecTV.⁶⁸ We will also assume that the rate at which customers return to their original MVPD is the same regardless which DBS firm they moved to. The pattern will match that of our local broadcast station analysis in that no customers will leave the DBS firms for the first 12 months following the temporary foreclosure, [REDACTED] will leave once their contracts expire, and in all following months, [REDACTED] of the remaining customers will return to their original MVPDs.

36. Under this scenario, the cost to News Corp. of the temporary foreclosure in the first month is the foregone affiliate fees from the cable company for the first month, as well as the advertising revenues those subscribers would have generated. In subsequent months, News Corp. will continue to lose a fraction of the affiliate fees and advertising revenue from the cable provider since a portion of the cable subscriber base will have switched to EchoStar and DirecTV, although over time as subscribers shift back to cable, this loss diminishes. The gain to News Corp. in the first month consists of its share of DirecTV's profit margin minus the subscriber acquisition cost. It receives this gain from the 58% of defecting cable subscribers that choose to switch to DirecTV. It also receives affiliate fees and advertising revenue from DirecTV and EchoStar for the fractions of defecting subscribers that switch to those services. In the second through twelfth months, News Corp. receives its share of DirecTV's additional profits as well as the RSN affiliate fees and advertising revenues from the DBS providers. In the thirteenth month, [REDACTED] of the former cable customers that switched to DirecTV and EchoStar will return to the cable MSO. In each subsequent month, EchoStar and DirecTV will lose [REDACTED] of the remaining customers. These flows of costs and benefits are discounted in the same manner as in our analysis of the broadcast station segment.

37. Our analysis of the incentives for News Corp. to engage in a strategy of temporary foreclosure against any of the [REDACTED] MSOs carrying a News Corp.-managed RSN indicates

⁶⁶ *Id.*

⁶⁷ JCC Sept. 23 Ex Parte, Rogerson Analysis III at 10.

⁶⁸ Applicants' Reply, CRA Analysis ¶ 32.

that there is a strong possibility that this type of behavior can be profitable following the transaction. If News Corp. could claim 50% of the additional joint profits, it would find a one month temporary withdrawal of the RSN to be profitable if, depending on the RSN and cable operator, between [REDACTED] and [REDACTED] of cable customers switched to a DBS provider. If News Corp. can lay claim to 100% of the additional joint profits, the percentage of cable customers that must switch to make temporary foreclosure profitable is between [REDACTED] and [REDACTED] for the various cable operators and RSNs. Table A-5 presents the percentage of rival cable subscribers that reside in areas where News Corp. would find it profitable to temporarily withhold its RSN. This value depends on the percent of subscribers to cable companies that shift in response to the one month withdrawal of the RSN. We examine the extent of the profitability of temporary withholding for a range of values of the consumer response. If [REDACTED] of cable customers defect to DirecTV following a withdrawal of the RSN, News Corp. would find the withdrawal profitable in areas with [REDACTED] of RSN cable subscribers if News Corp. can lay claim to 50% of the joint profits. If News Corp. gains 100% of the joint profits, [REDACTED] of RSN cable subscribers are at risk from suffering under a temporary withdrawal of the programming.

38. Table A-5. Percentage of Cable Subscribers at Risk of a Temporary Withdrawal of Regional Sports Programming.[REDACTED]

C. Estimation of the Impact on DirecTV of the Withdrawal of Regional Sports Networks from Rival MVPDs

39. Parties in this proceeding have alleged that News Corp., once the transaction has been completed, will have an incentive to engage in temporary foreclosure as a strategy to increase rates for the Fox-managed RSNs, as well as shift subscribers from rival MVPDs to DirecTV. At the heart of these claims are suppositions about how consumers react when a RSN is removed from one MVPD, but remains available on other MVPDs. We estimate the actual shifts in subscribers that occurred during periods when the Yankees Entertainment and Sports Network (YES) was unavailable to subscribers of the Cablevision cable system and the EchoStar DBS service, but was available to DirecTV subscribers.

40. On March 19, 2002 the YES network was launched as a regional sports network in the New York area. At the time of launch, the network had agreements with several professional sports teams, as well as an assortment of local high school and college sporting events. At launch, the network carried New York Yankees baseball games.⁶⁹ In November of 2002 New Jersey Nets basketball games became available.⁷⁰ These teams had previously been available on competing RSNs which were carried by many local cable companies and both DBS providers.⁷¹ Prior to launch, YES network reached affiliate agreements with 35 cable companies as well as DirecTV.⁷² It did not reach an agreement with either Cablevision or EchoStar. On March 31, 2003, approximately 25 minutes prior to the start of the first Yankees game of the season, Cablevision and YES reached an interim agreement for carriage.⁷³

⁶⁹ Christopher Schultz, *The Starting Lineup*, Cable World, March 18, 2002.

⁷⁰ Steve Zipay, *Nets Latest Victim of Cablevision Greed*, Newsday, November 13, 2002.

⁷¹ Erin McClam, *Opening Day Deal for Cablevision, YES Network*, Associated Press, April 1, 2003.

⁷² *Id.*

⁷³ *Id.*

EchoStar still does not carry the YES network.

41. This episode of availability, followed by withdrawal, followed by availability exhibits the pattern of temporary foreclosure proposed by some parties in this proceeding. Several parties have argued that this episode can provide a prime example of the likely shifts in MVPD subscribers when faced with a temporary withdrawal of a RSN.⁷⁴ Applicants argue that the impact on Cablevision of the loss of New York Yankees games, as well as other professional sports teams, was on the order of 30,000 customers.⁷⁵ However no party conducted a thorough examination of the effect of this episode on the numbers of DirecTV subscribers, while accounting for pre-existing patterns of subscriber shifts which are naturally occurring in the MVPD marketplace.⁷⁶

42. We approach the problem in the same fashion as we estimated the impact of the warnings and ultimate withdrawal of the ABC affiliate in Houston. We obtain data from two separate groups. A control group which is unaffected by the policy for the entire period under observation, and a treatment group, that for some period of time has the policy applied to them. The policy or treatment is the removal of Yankees and Nets games from the cable system. Our treatment group consists of those ZIP codes within the New York DMA that are wholly served by Cablevision. For our control group we use those ZIP codes within the New York DMA that are wholly served by Time Warner, which had reached an agreement to carry the YES network.⁷⁷ We measure the effect of these events on the growth rate in DirecTV subscribers for each month between January 2001 and June 2003.

43. Table A-6 presents the estimated treatment effects for each month since January 2002. The values represent the additional percentage growth in subscribers above what would have been predicted to occur had Cablevision been carrying the YES network. The pattern is growth rates follows what we might reasonably expect to see happen. [REDACTED].

44. Table A-6. Additional DirecTV Subscriber Growth in New York due to YES Dispute with Cablevision. [REDACTED]

45. We can calculate the short-term impact of the withdrawal of New York Yankees games by applying the excess growth rates [REDACTED].⁷⁸ [REDACTED].⁷⁹ Therefore we estimate that the

⁷⁴ JCC Sept. 23 Ex Parte, Rogerson Analysis III at 16; Applicants' Sept. 8 Ex Parte, CRA Analysis II at 10-11; Letter from Pantelis Michalopoulos, Steptoe and Johnson, L.L.P., to Marlene H. Dortch, Secretary, FCC (Dec. 15, 2003) ("EchoStar Dec. 15 Ex Parte") at 4-5.

⁷⁵ Some press reports put this figure as high as 39,400. See for example Erin McClam, *Opening Day Deal for Cablevision, YES Network*, Associated Press, April 1, 2003.

⁷⁶ EchoStar did perform an analysis of its loss in customers due to its lack of the YES network. However, the additional incentive to engage in temporary foreclosure that this transaction creates is derived from the customers that shift to DirecTV. EchoStar's analysis only examines an unknown fraction of that shift. EchoStar Dec. 15 Ex Parte, Exhibit 1.

⁷⁷ To make a determination of which ZIP codes fall within the service areas of the two firms we use the May 2003 GDT Dynamap 2000 ZIP code boundaries and the 3rd Quarter 2002 incumbent cable operator service territories from MediaPrints™.

⁷⁸ This estimate is based upon DirecTV July 30, 2003 Response [REDACTED] as well as GDT ZIP code boundaries and MediaPrints™ cable system boundaries.

withdrawal of Yankees games during April of 2002 cost Cablevision [REDACTED] of its customer base. If we assume that a similar shift away from Cablevision would occur if both competitors, EchoStar and DirecTV, carried the desired programming but Cablevision did not, our results indicate that DirecTV would capture [REDACTED] of Cablevision's customers and EchoStar would capture [REDACTED] during a one month withdrawal of programming. Over the entire one-year course of the dispute, our analysis predicts that DirecTV gained an additional [REDACTED] subscribers due to the absence of the YES network on Cablevision and EchoStar. This equates to an increase of [REDACTED] of DirecTV customers and a loss of [REDACTED] to Cablevision.

46. Applicants have argued that the maximum shift from Cablevision to DirecTV was on the order of 30,000 subscribers for the entire one year period. We reject that estimate for a number of reasons. First and foremost, we have no information on how this value was generated and what factors it takes into account. Cablevision's SEC reports indicate that between December 2000 and December 2001 the percentage of homes served rose from 68.0% to 69.4%. However, by the end of March 2002, this penetration rate had fallen to 69.1% of homes passed. This decline continued through March 2003, when it reached a low of 67.5%. The most recent figures, for June of 2003, indicate that this trend has been reversed, with the penetration rate rising to 67.6%. Cablevision passes slightly more than 4 million homes in the New York area, so each point of penetration corresponds to approximately 40,000 customers. This naive analysis would indicate that Cablevision may have lost 64,000 customers over the course of the year in which it did not carry YES. Cablevision's own data indicate a substantial loss in customers, a loss in excess of the 30,000 claimed by Applicants.

47. We also need to assess the extent to which the return of withdrawn programming to an MVPD provider influences the behavior of consumers. Applicants argue that once the temporarily withdrawn programming has returned to an MVPD those households that switched to DirecTV are more likely to leave DirecTV and return to their previous service providers.⁸⁰ Other parties however argue that those customers that switched may be less likely to move back for a number of reasons, including a concern that the programming may be withdrawn again.⁸¹ Using the same technique as we did to examine the shift in consumers, we can examine the churn, or disconnect, rate of DirecTV subscribers in Time Warner and Cablevision service areas of the New York DMA. Our previous regression results indicate that [REDACTED]. Estimating exactly the same regression specification with the exception of using the percentage of customers disconnecting in a month as the dependent variable, we find

(Continued from previous page)

⁷⁹ CSC HOLDINGS INC 8-k, May 15, 2003.

⁸⁰ Applicants' Sept. 8 Ex Parte, CRA Analysis II ¶ 12

⁸¹ JCC Aug. 4 Ex Parte, Rogerson Analysis II at 17; Cablevision Sept. 25 Ex Parte, Rubinfeld Analysis II at 9.

[REDACTED]. *We would have expected the monthly disconnect rate in Cablevision ZIP codes to have been [REDACTED].* Therefore, we will assume that the disconnect rate is [REDACTED] that for other DirecTV customers in the time period when the DirecTV contracts expire for those customers who shifted due to the temporary withdrawal. Applicants report that [REDACTED] of customers drop DirecTV service after 1 year, so we estimate that [REDACTED] of customers induced to switch to DirecTV during a temporary withdrawal will drop DirecTV service once their contract expires.

APPENDIX E

HUGHES ELECTRONICS CORPORATION
(hereinafter called the "Corporation")
AMENDED AND RESTATED BY-LAWS

EXHIBIT 1

STOCKHOLDERS

Section 1. Annual Meeting; Notice of Stockholders Nominations and Other Proposed Stockholder Action. The Annual Meeting of the stockholders for the purpose of electing Directors and for the transaction of such other business as may properly come before the meeting in accordance with these By-Laws, shall be held at such place, on such date, and at such time as may be fixed by the Board of Directors (the "Board") and stated in the notice of meeting.

(a) Nominations of persons for election to the Board and the proposal of business to be transacted by the stockholders may be made at an Annual Meeting of stockholders (i) pursuant to the Corporation's notice with respect to such meeting, (ii) by or at the direction of the Board or (iii) by any stockholder of record of the Corporation who was a stockholder of record at the time of the giving of the notice provided for in the following paragraph, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in Section 1(b) below.

(b) For nominations or other business to be properly brought before an Annual Meeting of stockholders by a stockholder pursuant to clause (iii) of the foregoing paragraph, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation; (ii) such business must be a proper matter for stockholder action under the General Corporation Law of the State of Delaware (the "DGCL"); (iii) if the stockholder has provided the Corporation with a Solicitation Notice (as defined herein) such stockholder must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such stockholder to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice; and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this Section 1, the stockholder or Beneficial Owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 1.

To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 120th day nor earlier than the close of business on the 150th day prior to the first anniversary (the "Proxy Mailing Anniversary") of the date on which the Corporation first mailed its proxy materials for the preceding year's Annual Meeting of stockholders; provided, however, that if the date of the Annual Meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's Annual Meeting, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of (i) the 150th day prior to the first anniversary of the preceding year's Annual Meeting or (ii) the 10th day following the day on which public announcement of the date of such meeting is first made.

Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a Director all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as Directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such person's written consent to be named as a nominee and to serve as a Director if elected; (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder; and (iii) as to the stockholder giving the notice (A) the name and address of such stockholder, as they appear on the Corporation's books, (B) the class and number of shares of the Corporation that are owned beneficially or of record by such stockholder, and (C) whether either such stockholder intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

Notwithstanding anything in the second sentence of Section 1(b) to the contrary, in the event that (x) the number of Directors to be elected to the Board is increased and (y) there is no public announcement naming all of the nominees for Director or specifying the size of the increased Board made by the Corporation on or prior to the 120th day prior to the Proxy Mailing Anniversary, a stockholder's notice required by this By-Law shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

Only persons nominated in accordance with the procedures set forth in this Section 1(b) shall be eligible to serve as Directors and only such business shall be conducted at an Annual Meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1(b). The chairman of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these By-Laws and, if any proposed nomination or business is not in compliance with these By-Laws, to declare that such defective proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

Nominations by stockholders of persons for election to the Board may be made at a special meeting of stockholders if the stockholder's notice required by this Section 1(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the 150th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

For purposes of this Section 1, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

Notwithstanding the foregoing provisions of this Section 1(b), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 1(b). Nothing in this Section 1(b) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2. Special Meetings; Notice.

Special meetings of the stockholders, other than those required by statute, may be called at any time by (a) the Board pursuant to a resolution approved by a majority of the Board, (b) the Chairman or a Vice Chairman or (c) any stockholder of the Corporation who Beneficially Owns (as defined herein) 10% or more of the Corporation's Voting Securities (as defined herein) then outstanding. No other person or persons may call a special meeting of stockholders except as provided in the Company's Certificate of Incorporation, as amended from time to time (the "Certificate of Incorporation"). Only such business as is stated in the notice may be acted upon thereat. The foregoing notwithstanding, unless otherwise provided in the Certificate of Incorporation, whenever the holders of any one or more outstanding series of Preferred Stock shall have the right, voting separately by class or by series, as applicable, to elect Directors at any Annual Meeting or special meeting of stockholders, the calling of special meetings of the holders of such class or series shall be governed by the terms of the applicable resolution or resolutions of the Board establishing such series of preferred stock pursuant to the Certificate of Incorporation. The Board may postpone or reschedule any previously scheduled special meeting.

Nominations of persons for election to the Board may be made at a special meeting of stockholders at which Directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board, or (b) by any stockholder of record of the Corporation who is a stockholder of record at the time of the giving of notice provided for in Section 1(b) of this Article I entitled to vote at the meeting who complies with the notice provisions set forth in Section 1(b) of this Article I.

Section 3. Notice of Meetings; Adjournment.

Except as otherwise provided herein or required by "applicable law" (meaning, here and hereinafter, as required from time to time by the DGCL) or the Certificate of Incorporation, written notice of the place, date, and time of all meetings of the stockholders and the purpose or purposes for which such meeting is called shall be given by mailing, postage prepaid, a copy of such notice addressed to each stockholder of the Corporation entitled to vote at such meeting at his address as recorded on the books of the Corporation, not less than 10 nor more than 60 days before the date on which the meeting is to be held.

Any meeting may be adjourned from time to time, whether or not there is a quorum, either (i) in the discretion of the chairman of the meeting where necessary for the proper and orderly conduct of the meeting (including, without limitation, where necessary to tabulate any vote the tabulation of which is necessary for the continued conduct of the meeting) or (ii) by vote of the holders of a majority of the voting power of the shares of stock present at the meeting.

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, date and time thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than 30

days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, date and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 4. Quorum.

At any meeting of the stockholders, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by these By-Laws, the Certificate of Incorporation or by applicable law. Where a separate vote by a class or classes or series is required by law or by the Certificate of Incorporation, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement to the meeting, to another date, place and time until a quorum shall be present.

Section 5. Organization.

The Chairman of the Board of the Corporation, or, in his or her absence, such person as the Board may have designated or, in the absence of such a person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or represented by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. The Secretary of the Corporation, or if he or she is not present, any Assistant Secretary, or in the absence of any Assistant Secretary of the Corporation, any person the chairman of the meeting appoints shall act as the Secretary of the meeting.

Section 6. Place of Meeting.

Meetings of the stockholders for the election of Directors or for any other purpose shall be held at such time and place, either within or outside the State of Delaware, as shall be designated from time to time by the Board and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 7. Conduct of Business.

The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. The Board may adopt by resolution such rules and regulations for the conduct of meetings as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairman of any meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business at the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting of stockholders of record of the Corporation, their duly authorized and constituted proxies and such other persons as the chairman

of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants.

Section 8. Proxies and Voting.

At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Unless otherwise provided in the Certificate of Incorporation, each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of capital stock entitled to vote thereat held by such stockholder. If the Certificate of Incorporation provides for the issuance of any class or series of stock which is convertible into any other class or series of stock, as a condition to counting the votes cast by any holder of shares at any annual or special meeting of stockholders, the Board or a duly authorized committee thereof, in its discretion, may require the holder of any shares to furnish such affidavits or other proof as the Board or such committee deems necessary and advisable to determine whether such shares have been converted pursuant to the terms governing the issuance and conversion of such shares in the Certificate of Incorporation. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. All voting, except as may be required by law, including voting for the election of Directors may be by a voice vote; provided, however, that upon demand therefor by a stockholder entitled to vote or by his or her proxy, or upon resolution by the Board in its discretion or by action of the chairman of the meeting, in his or her discretion, a stock vote may be taken. Every stock vote shall be taken by written ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. Unless otherwise specified by the Certificate of Incorporation or these By-Laws, (i) at all meetings of stockholders for the election of Directors, a plurality of the votes cast shall be sufficient to elect, and (ii) any other question brought before any meeting of stockholders shall be determined by the votes cast affirmatively or negatively by the holders of a majority of the stock represented and entitled to vote thereon.

Section 9. Stock List.

The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 9 or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 10. Inspector of Elections.

Before any meeting of stockholders, the Board shall appoint one or more inspectors to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability.

The inspectors shall, in accordance with these By-Laws and the Certificate of Incorporation, ascertain the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination made by the inspectors, and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots.

The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. In determining the validity and counting of proxies and ballots, the inspectors shall act in accordance with applicable law.

BOARD OF DIRECTORS

Section 1. Number, Election and Term of Directors.

Except as otherwise fixed by or pursuant to the provisions of the Certificate of Incorporation relating to the rights of the holders of any class or series of preferred stock, the number of Directors of the Corporation shall be fixed from time to time by resolution adopted by a majority of the entire Board, but the number of Directors shall at no time be less than eleven (11) and initially shall be eleven (11). Directors need not be stockholders. Directors shall (except as hereinafter provided for the filling of vacancies) be elected by the holders of the shares of stock entitled to vote thereon, by a plurality vote thereof, at the Annual Meeting of stockholders. Each Director so elected shall hold office until such Director's successor is duly elected and qualified, or until such Director's death, or until such Director's earlier disqualification, resignation, retirement or removal.

Section 2. Certain Definitions. For the purposes of these By-Laws:

"Acquisition-Related Agreements" means the Merger Agreement, the Stock Purchase Agreement and any other Transaction Agreements (as defined in the Stock Purchase Agreement).

"Affiliate" with respect to any person shall mean any other person who, directly or indirectly, controls, is controlled by or is under common control with such person.

"Beneficially Owns" (and variations thereof) shall have the same meaning as under Section 13(d) of the Exchange Act and Regulation 13D-G thereunder (or any successor provision of law).

"Employee Director" means a Director, who at the time of taking office as a Director, is an employee of the Corporation or any Subsidiary of the Corporation.

“Independent Director” means a director who qualifies as an “independent director” under the rules and regulations of the New York Stock Exchange in effect from time to time; provided, however, that if, at any particular time, the New York Stock Exchange has not then adopted a definition of “independent director”, “Independent Director” shall mean a director who, as determined in good faith by the Board (other than the “Independent Director” in question), has no relationship to the Corporation that may interfere with the exercise of his or her independence from management of the Corporation and the Corporation and no material relationship with any member of the Purchaser Group (as defined in the Certificate of Incorporation) or any Purchaser Successor (as defined in the Certificate of Incorporation). “Merger Agreement” shall mean the Agreement and Plan of Merger, dated as of April 9, 2003, as amended, by and among the Corporation, The News Corporation Limited and GMH Merger Sub, Inc.

“Purchaser” means The News Corporation Limited and any successor (by merger, consolidation, transfer of assets or otherwise) to all or substantially all of its business and assets, which also succeeds to ownership of all or substantially all of its ownership of Voting Securities. “Stock Purchase Agreement” shall mean the Stock Purchase Agreement, dated as of April 9, 2003, as amended, by and among The News Corporation Limited, GMH Merger Sub, Inc., and General Motors Corporation.

“Subsidiary” with respect to a Person, means any corporation, limited liability company, partnership, trust or unincorporated organization of which such Person owns, directly or indirectly, 50% or more of the outstanding stock or other equity interests, the holders of which are entitled to vote for the election of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership, trust or unincorporated organization.

“Voting Securities” means the common stock, par value \$0.01 per share, of the Corporation and any shares of capital stock of the Corporation entitled to vote generally in the election of Directors. A stated percentage of the Voting Securities shall mean a number of shares of the Voting Securities as shall equal in voting power that stated percentage of the total voting power of the then outstanding shares of Voting Securities entitled to vote in the election of Directors.

Section 3. Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of any class or series of preferred stock of the Corporation to nominate and elect a specified number of Directors in certain circumstances. Nominations of persons for election to the Board may be made at any Annual Meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing Directors, (i) by or at the direction of the Nominating Committee or (ii) by any stockholder of record of the Corporation who is a stockholder of record at the time of the giving of notice provided for in Section 1(b) or Section 2 of Article I entitled to vote at the meeting who complies with the notice provisions set forth in Section 1(b) of Article I.

Section 4. Newly Created Directorships and Board Vacancies.

Subject to applicable law and except as otherwise provided for or fixed by or pursuant to the Certificate of Incorporation relating to the rights of the holders of any class or series of preferred stock with respect to such class or series of preferred stock, newly created Directorships resulting from any increase in the authorized number of Directors or, subject to Section 12(b) of this Article II below,

any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause between meetings of stockholders shall be filled only by the affirmative vote of a majority of all of the Directors then in office, even if less than a quorum, or a duly appointed committee of the Board, but in any event not by the stockholders. Directors so chosen shall hold office until such Director's successor shall have been duly elected and qualified or until his earlier death, resignation, retirement, disqualification or removal from office in accordance with the Certificate of Incorporation, these By-Laws, or any applicable law or pursuant to an order of a court. No decrease in the number of authorized Directors constituting the entire Board shall shorten the term of any incumbent Director.

Section 5. Regular Meetings.

A meeting of the Board shall be held after the Annual Meeting of the stockholders and regular meetings of the Board shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board and publicized among all Directors. Meetings may be held either within or outside the State of Delaware. A notice of each regular meeting shall not be required.

Section 6. Special Meetings.

Special meetings of the Board may be called by the Chairman of the Board, by the Vice Chairman, by the President or by two or more Directors then in office and shall be held at such place, on such date, and at such time as they or he or she shall fix. Meetings may be held either within or outside the State of Delaware. Notice thereof, stating the place, date and time of each such special meeting shall be given each Director by whom it is not waived by mailing written notice not less than four (4) days before the meeting or personally by telephone, or electronic mail, facsimile transmission of notice, or by similar means of communication not less than 12 hours before the meeting or on such shorter notice as the person or persons calling the meeting may deem necessary and appropriate under the circumstances. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 7. Quorum.

Except as may be otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, at all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business. The act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. The Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 8. Participation in Meetings by Conference Telephone.

Members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 9. Conduct of Business; Action by Written Consent.

At any meeting of the Board, business shall be transacted in such manner as the Board may from time to time determine, and all matters shall be determined by the vote of a majority of the Directors present, except as otherwise provided herein or required by law. The Board may take action without a meeting if all members thereof consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board.

Section 10. Powers.

The property, business and affairs of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders of the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

- (1) To declare dividends from time to time in accordance with law;
- (2) To purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;
- (3) To authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, and to do all things necessary in connection therewith;
- (4) To remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;
- (5) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;
- (6) To adopt from time to time such stock option, stock purchase, bonus or other compensation plans for Directors, officers, employees and agents of the Corporation and its Subsidiaries as it may determine;
- (7) To adopt from time to time such insurance, retirement, and other benefit plans for Directors, officers, employees and agents of the Corporation and its Subsidiaries as it may determine; and
- (8) To adopt from time to time regulations, not inconsistent with these By-Laws, for the management of the Corporation's business and affairs.

Section 11. Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation, the Board shall have the authority to fix the compensation of the Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or paid a stated salary or paid other compensation as Director. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 12. Removal; Employee Director Removal.

(a) Except as otherwise provided by the Certificate of Incorporation, any Director may be removed from office with or without cause but only by the affirmative vote of the holders of a majority of the combined voting power of the then outstanding shares of stock of the Corporation entitled to vote for the election of Directors, voting together as a single class.

(b) Notwithstanding anything set forth in this Section 12, unless otherwise determined by the Board, an Employee Director shall cease to be qualified to serve as a Director and shall automatically be removed from office (an "Employee Director Removal") without any action on the part of the stockholders or the other members of the Board, if such person ceases to be an employee of the Corporation or any one of its Subsidiaries, with the removal of such Director to take place upon the earliest of (i) such Director's cessation of employment, (ii) delivery by such Employee Director to the Corporation, or such Subsidiary or Subsidiaries, as the case may be, of a notice of resignation of employment, or (iii) delivery by the Corporation or one of its Subsidiaries, as the case may be, to such Employee Director of a notice of termination of employment.

Section 13. Special Election or Appointment.

Notwithstanding anything to the contrary contained in Section 3 and Section 4 of this Article II, any Directors elected or appointed (including to fill a vacancy due to the increase of the size of the Board), in accordance with Exhibit A to the Merger Agreement (or otherwise agreed upon by and among the parties to the Merger Agreement) so as to take office not later than immediately following the Merger Effective Time (as defined in the Merger Agreement), shall be deemed to be validly elected and appointed irrespective of the provisions of the above referenced Sections.

COMMITTEES

Section 1. Committees of the Board.

The Board, by a vote of a majority of the entire Board then in office, may from time to time designate committees of the Board, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board and shall, for those committees and any others provided for herein, elect a Director or Directors to serve as the member or members, designating, if it desires, other Directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board to act at the meeting in the place of the absent or disqualified member. Notwithstanding the foregoing provisions of this Section if either (A) required by the applicable rules and regulations of the New York Stock Exchange or the Securities and Exchange Commission (in each case, as may be amended from time to time) or (B) under the Certificate of Incorporation the Board is required to consist of a majority of Independent Directors, then from and after the Merger Effective Time, and for so long as the conditions in clauses (A) or (B) above are satisfied, the Standing Committees (as defined herein), shall at all such times consist solely of Independent Directors, except as otherwise provided by these By-Laws. Without limiting the foregoing, the Board shall designate the

following committees (the “Standing Committees”): Audit Committee, Nominating / Corporate Governance Committee and Compensation Committee.

Section 2. Conduct of Business.

Any committee, to the extent allowed by law and provided in the resolution establishing such committee, shall have and may exercise all the duly delegated powers and authority of the Board in the management of the business and affairs of the Corporation. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, regular and special meetings and other actions of any such committee shall be governed by the provisions of Article II applicable to meetings and actions of the Board. Each committee shall keep regular minutes and report to the Board when required.

Section 3. Audit Committee.

(a) The Audit Committee shall have at least three (3) members.

(b) The Audit Committee shall have such responsibilities, and such powers and authority, as are required under the rules and regulations of the New York Stock Exchange, applicable law and the rules and regulations of the Securities and Exchange Commission, or as are normally incident to the functions of an audit committee (including authority to retain counsel and consultants to assist it in carrying out its responsibilities) or as may be determined by the Board.

(c) The Audit Committee shall have the sole authority on behalf of the Corporation to assert, defend or settle any claims under and relating to any Acquisition-Related Agreement, except as may be expressly provided in Section 9.4(f) of the Stock Purchase Agreement.

(d) The Audit Committee shall have sole authority to review, consider and pass upon any Related Party Transaction, and no such transaction shall be effected without the approval of or authorization of a majority of the Audit Committee, provided that the committee may ratify any such transaction.

(e) The Audit Committee shall have the powers to (i) engage advisers at the reasonable expense of the Corporation to assist in its review and decision regarding any matter including any Related Party Transaction; (ii) utilize internal Corporation resources, including requiring the assistance of an executive employee of the Corporation; and (iii) review Corporation contracts, books and records.

(f) The Audit Committee may have additional responsibilities as shall be set forth in the Audit Committee Charter from time to time.

(g) Until such time as the United States Department of Justice, Federal Bureau of Investigation, and the United States Department of Homeland Security confirm to the Corporation in writing that the following provisions need no longer apply, then

(i) *All members of the Audit Committee shall be United States citizens.*

(ii) The Audit Committee shall have sole authority over the establishment, oversight and evolution of policies, practices and procedures related to or materially affecting the Corporation's actions concerning (a) requests from a Foreign government or other Foreign entity to conduct electronic surveillance using the domestic communications network or to obtain information relating to domestic communications or electronic surveillance conducted using the domestic communications network, (b) requests or directives from a Foreign government or other Foreign entity to alter, affect or obtain information about the operations, security, personnel or infrastructure of the domestic communications network, (c) any decision by the Corporation involving document preservation requests from any government agency in the United States related to the domestic communications network, where those decisions relate to Foreign laws or requests from a Foreign government or other Foreign entity, (d) any requests or directives from a Foreign government or other Foreign entity relating to the preservation, storage, retention or destruction of documents related to the domestic communications network, (e) any attempt by a Foreign government or other Foreign entity to induce an employee of the Corporation to violate United States law, and (f) any decision by the Corporation relating to compliance with lawful U.S. process where Foreign laws or requests from a Foreign government or other Foreign entity may be a factor. For the purposes of this subsection only, the term "Foreign" means non-U.S.; and the term "domestic communications" means (x) wire communications or electronic communications (whether stored or not) from one U.S. location to another U.S. location and (y) the U.S. portion of a wire communication or electronic communication (whether stored or not) that originates or terminates in the United States.

For the purposes of this Section 3 only, "Related Party Transaction" means any transaction or series of transactions between the Corporation or any of its subsidiaries on the one hand, and another party or parties on the other hand, in such amounts and related to such matters that the Audit Committee determines could be considered an interested transaction between the Company or its subsidiaries and such other party or parties.

Section 4. Compensation Committee.

(a) The Compensation Committee shall be composed of at least three (3) Directors. The Compensation Committee shall have the power and authority to approve, adopt and implement the incentive, stock option and similar plans of the Corporation and its Subsidiaries. The Compensation Committee shall have the power to approve, disapprove, modify or amend all plans designed and intended to provide compensation primarily for officers of the Corporation. The Compensation Committee shall review, fix and determine from time to time the salaries and other remunerations of all officers of the Corporation.

(b) The Compensation Committee shall have such powers and authority as necessary to carry out the foregoing responsibilities and shall have such other responsibilities, and such other powers and authority, as may be determined by the Board.

(c) The Compensation Committee may have additional responsibilities as shall be set forth in the Compensation Committee Charter from time to time.

Section 5. Nominating / Corporate Governance Committee.

(a) The Nominating / Corporate Governance Committee shall be composed of at least three (3) Directors. The Nominating / Corporate Governance Committee shall have the full and exclusive power and authority to evaluate Director candidates for election to the Board and committees of the Board, to nominate Directors for election to the Board at any annual or special meeting of stockholders. The Committee shall also be responsible for matters related to service on the Board, and associated issues of corporate governance.

(b) The Nominating / Corporate Governance Committee shall have such powers and authority as necessary to carry out the foregoing responsibilities and shall have such other responsibilities, and such other powers and authority, as may be determined by the Board.

(c) The Nominating / Corporate Governance Committee may have additional responsibilities as shall be set forth in the Nominating / Corporate Governance Committee Charter from time to time.

OFFICERS

Section 1. General.

The officers of the Corporation shall be elected by the Board and shall be a Chairman of the Board (who must be a Director), a President (who shall also be the Chief Executive Officer), a Secretary and a Treasurer. The Board, in its sole discretion, may also choose one or more Vice Chairmen, Senior Executive Vice Presidents, Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The Board may, from time to time, delegate the powers or duties of any officer to any other officers or agents, notwithstanding any contrary provision hereof.

Section 2. Election; Removal.

The Board at its first meeting held after each Annual Meeting of stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time solely by the Board, which determination may be by resolution of the Board or in any By-Law provisions duly adopted or approved by the Board and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. The salaries of the officers elected by the Board shall be fixed from time to time by the Board or by such officers as may be designated by resolution of the Board, upon recommendation or action of the Compensation Committee. Any officer elected by the Board may be removed at any time by the Board with or without cause. Only the Board may fill any vacancy occurring in any office of the Corporation.

Section 3. Chairman of the Board.

The Chairman of the Board shall be initially appointed in accordance with the Merger Agreement, shall preside at all meetings of the Board and of stockholders (unless the Board designates another person) and, except where by applicable law the signature of the President is required, the Chairman of the Board shall possess the same power as the President to sign all contracts, certificates and

other instruments of the Corporation which may be authorized by the Board. The Chairman of the Board shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board.

Section 4. Vice Chairmen of the Board.

The Vice Chairmen, if such are appointed by the Board, shall report and be responsible to the Chairman of the Board or, if the Board so directs, the President and Chief Executive Officer. The Vice Chairmen shall have such powers and perform such duties as from time to time may be assigned or delegated to him or her by the Board or are incident to the office of Vice Chairman. During the absence, disability, or at the request of the Chairman of the Board, a Vice Chairman shall perform the duties and exercise the powers of the Chairman of the Board. In the absence or disability of both the Vice Chairmen and the Chairman of the Board, the President or another person designated by the Board shall perform the duties and exercise the powers of the Vice Chairmen, and unless otherwise determined by the Board, the duties and powers of the Chairman.

Section 5. President and Chief Executive Officer.

The President shall report and be responsible to the Board and shall be initially appointed in accordance with the Merger Agreement. The President shall be the Chief Executive Officer of the Corporation and shall have general supervision of the business of the Corporation and shall have the authority to see that all orders and resolutions of the Board are carried into effect and shall have such powers and perform such duties as from time to time may be assigned or delegated to him or her by the Board or are incident to the office of President. During the absence or disability of the Vice Chairman (if there be one so appointed), or at the request of the Chairman of the Board, the President shall perform the duties and exercise the powers of the Vice Chairman of the Board. During the absence or disability of the Chairman of the Board and the Vice Chairman, or at the request of the Chairman of the Board, the President shall perform the duties and exercise the powers of the Vice Chairman and the Chairman of the Board. In the absence or disability of the President, the person designated by the Board shall perform the duties and exercise the powers of the President, and unless otherwise determined by the Board, the duties and powers of the Vice Chairman.

Section 6. Senior Executive Vice Presidents.

The Senior Executive Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Senior Executive Vice President.

Section 7. Executive Vice Presidents.

The Executive Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Executive Vice President.

Section 8. Senior Vice Presidents.

The Senior Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Senior Vice President.

Section 9. Vice Presidents.

The Vice Presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Board or are incident to the office of Vice President.

Section 10. Secretary.

The Secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board may order, a book of minutes of all meetings of stockholders, the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, a copy of the By-Laws of the Corporation at the principal executive office of the Corporation or such other place as the Board may order.

The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one be appointed, a stock register, or a duplicate stock register, showing the names of the stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the stockholders, and of the Board and any committees thereof required by these By-Laws or by law to be given, shall keep the seal of the Corporation in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 11. Treasurer.

The Treasurer shall have custody of the corporate funds and securities of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, and shall send or cause to be sent to the stockholders of the Corporation such financial statements and reports as are required by law or these By-Laws to be sent to them.

The Treasurer shall deposit all monies and valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the President and the Board, whenever they request it, an account of all transactions and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 12. Other Officers.

Such other officers or assistant officers as the Board may designate shall perform such duties and have such powers as from time to time may be assigned to them by the Board. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

Section 13. Execution of Contracts and Other Documents.

Each officer of the Corporation may execute, affix the corporate seal and/or deliver, in the name and on behalf of the Corporation, deeds, mortgages, notes, bonds, contracts, agreements, powers of attorney, guarantees, settlements, releases, evidences of indebtedness, conveyances, or any other document or instrument which is authorized by the Board or is required to be executed in the ordinary course of business of the Corporation, except in cases where the execution, affixation of the corporate seal and/or delivery thereof shall be expressly and exclusively delegated by the Board to some other officer or agent of the Corporation.

Section 14. Action with Respect to Securities of Other Corporations.

Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board or the President or any other officer or officers authorized by the Board, the Chairman of the Board or the President, and any such officer may, in the name of and on behalf of the Corporation, vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation and take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board may, by resolution from time to time, confer like powers upon any other person or persons.

STOCK

Section 1. Certificates of Stock.

The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time determine, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the stock of the Corporation shall be represented by uncertificated shares. Notwithstanding the adoption of such a resolution or resolutions by the Board, each stockholder shall be entitled, upon request, to a certificate certifying the number of shares owned by him or her and signed in the name of the Corporation (i) by the Chairman or Vice Chairman of the Board, the President or any Executive Vice President, Senior Vice President or Vice President and (ii) by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer. Where a certificate is countersigned by (i) a transfer agent or (ii) a registrar, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar whose signature appears on the certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue. Except as expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 2. Transfers of Stock.

Transfers of shares of capital stock of the Corporation shall be made only on the stock record of the Corporation by the holder of record thereof or by his, her or its attorney thereunto authorized by the power of attorney duly executed and filed with the Secretary of the Corporation or the transfer agent thereof, and, in the case of certificated shares, only on surrender of the certificate or certificates representing such shares, properly endorsed or accompanied by a duly executed stock transfer power. Upon receipt of proper transfer instructions from the registered owner of uncertificated shares, such uncertificated shares shall be cancelled and issuance of new equivalent uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded in the books of the Corporation. Registration of transfer of any shares shall be subject to applicable provisions of the Certificate of Incorporation and applicable law with respect to the transfer of such shares. The Board may make such additional rules and regulations as it may deem expedient concerning the issue and transfer of certificates representing shares of the capital stock of the Corporation.

Section 3. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in any other lawful action, the Board may fix, in advance, a record date in respect of such meeting, which record date shall not be more than 60 nor less than 10 days before the date of such meeting; provided, however, that if no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board adopts a resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) Notwithstanding Section 3(a) of this Article V, the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting shall be as fixed by the Board or as otherwise established under this Section 3(b). Any person seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the Secretary and delivered to the Corporation, request that a record date be fixed for such purpose. The Board may fix a record date for such purpose, which shall be no more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board and shall not precede the date such resolution is adopted. If the Board fails within 10 days after the Corporation receives such notice to fix a record date for such purpose, the record date shall be the day on which the first written consent is delivered to the Corporation in the manner described in Section 3(c) below unless prior action by the Board is required under the DGCL, in which event the record date shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) Every written consent purporting to take or authorizing the taking of corporate action and/or revocations (each such written consent and related revocation is referred to in this Section 3(c) as a "Consent") shall bear the date of signature of each stockholder who signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by this Section 3(c), Consents

signed by a sufficient number of stockholders to take such action are so delivered to the Corporation. A Consent shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery to the Corporation's registered office, to its principal place of business or to such officer or agent shall be made by hand or by certified or registered mail, return receipt requested. In the event of the delivery to the Corporation of a Consent, the Secretary of the Corporation shall provide for the safe-keeping of such consent and shall promptly conduct such ministerial review of the sufficiency of the Consents and of the validity of the action to be taken by stockholder consent as he or she deems necessary or appropriate, including, without limitation, whether the holders of a number of shares having the requisite voting power to authorize or take the action specified in the Consent have given consent; provided, however, that if the corporate action to which the Consent relates is the removal or replacement of one or more members of the Board, the Secretary or the Corporation shall promptly designate two persons who shall not be members of the Board, to serve as inspectors with respect to such Consent and such inspectors shall discharge the functions of the Secretary of the Corporation under this Section 3(c). If the Certificate of Incorporation provides for the issuance of any class or series of stock which is convertible into any other class or series of stock, as a condition to counting the votes cast by any holder of shares at any annual or special meeting of stockholders, or in connection with any Consent of stockholders, the Board or a duly authorized committee thereof, in its discretion, may require the holder of any shares to furnish such affidavits or other proof as the Board or such committee deems necessary and advisable to determine whether such shares have been converted pursuant to the terms governing the issuance and conversion of such shares in the Certificate of Incorporation. If after such investigation the Secretary or the inspectors (as the case may be) shall determine that the Consent is valid and that the action therein specified has been validly authorized, that fact shall forthwith be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders, and the Consent shall be filed in such records, at which time the Consent shall become effective as stockholder action. In conducting the investigation required by this Section 3(c), the Secretary or the inspectors (as the case may be) may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors, and such other personnel as they may reasonably deem necessary or appropriate to assist them, and shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

Section 4. Lost, Stolen or Destroyed Certificates.

The Board may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to advertise the same in such manner as the Board shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5. Regulations.

The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board may establish.

Section 6. Record Owners.

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

NOTICES

Section 1. Notices.

Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, Director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, recognized overnight delivery service or by sending such notice by facsimile, receipt acknowledged, or by prepaid telegram or mailgram. Any such notice shall be addressed to such stockholder, Director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered through the mails or by telegram or facsimile shall be the time of the giving of the notice.

Section 2. Waivers.

A written waiver of any notice, signed by a stockholder, Director, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such stockholder, Director, officer, employee or agent. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice of such meeting except attendance for the sole purpose of objecting to the timeliness of notice.

MISCELLANEOUS

Section 1. Facsimile Signatures.

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these By-Laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

Section 2. Corporate Seal.

The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.